

TO BE PUBLISHED

# Supreme Court of Kentucky

2010-SC-000398-KB

AUG 26 2010

ERIC LAMAR EMERSON

MOVANT

V.

IN SUPREME COURT

KENTUCKY BAR ASSOCIATION

RESPONDENT

## OPINION AND ORDER

Eric Lamar Emerson, KBA No. 89553, was admitted to the practice of law on November 8, 2002 and his bar roster address is 4510 West Corral Road Laveen, Arizona 85339. He moves this Court to impose the sanction of a thirty-day suspension from the practice of law with suspension to commence upon entry of this Order. The KBA has no objection to the motion, as the parties have agreed to this negotiated sanction pursuant to SCR 3.480(2).

### **KBA File 71335**

On July 29, 2009, Brenda Ellis, a client of Emerson's, filed a bar complaint alleging that Emerson accepted \$100.00 to complete work on her behalf, that Emerson did not complete the work, and he did not refund the fee. In response, the Inquiry Commission issued a charge including Ellis'

allegations, allegations that Emerson failed to update his bar roster address, and allegations that he failed to respond to the bar complaint. Subsequently, the Inquiry Commission amended that charge on August 17, 2009 due to typographical errors, but Emerson failed to respond. The case was then submitted to the Board of Governors as a default pursuant to SCR 3.210(1). On November 19, 2009, Emerson moved to submit an untimely answer to the charge and tendered an answer. The Board of Governors granted that motion and removed the case from their docket on November 20, 2009.

The information contained in Emerson's Answer and Affidavit rebutted Ellis' allegations, but provided no explanation for his failure to update his bar roster address or his failure to respond to the bar complaint. The Inquiry Commission issued a Second Amended Charge on February 4, 2010, deleting Ellis' allegations, but retaining the counts alleging Emerson's: (1) failure to update his bar roster address as required by SCR 3.175, a violation of SCR 3.130-3.4(c), which prohibits a knowing violation of a tribunal's rules; and (2) his failure to respond to the bar complaint, a violation of SCR 3.130-8.1(b), which prohibits the knowing failure to respond to a lawful demand for information from a disciplinary authority.

#### **Negotiated Sanction**

Emerson admits that his misconduct in these matters constituted a violation of SCR 3.130-3.4(c) and SCR 3.130-8.1(b). He and the KBA have agreed to a negotiated sanction pursuant to SCR 3.480(2) and he now requests this Court to impose a thirty-day suspension from the practice of law.

Emerson is currently suspended from the practice of law due to several previous disciplinary cases. On December 18, 2008 he was suspended for sixty-one days for violations of SCR 3.130-1.1, SCR 3.130-1.3, SCR 3.130-1.4(a), SCR 3.130-1.16(d) and SCR 3.130-8.1(b). *Kentucky Bar Ass'n v. Emerson*, 275 S.W.3d 183 (Ky. 2008). The KBA filed an objection to automatic reinstatement on February 9, 2009. On January 22, 2009 Emerson was suspended for an additional one hundred and eighty-one days for violations of SCR 3.130-1.16(d) and SCR 3.130-8.1(b). *Kentucky Bar Ass'n v. Emerson*, 276 S.W.3d 823 (Ky. 2009). Finally, on January 21, 2010, Emerson received a two-year suspension based on disciplinary sanctions issued by the Ohio Supreme Court. *Kentucky Bar Ass'n v. Emerson*, 303 S.W.3d 108 (Ky. 2010). Emerson has been suspended for more than one hundred and eighty-one days already and therefore must comply with the requirements of SCR 3.510(3) and be referred to the Character and Fitness Committee for reinstatement proceedings.

Although the parties provide no authority for this recommended sanction, we agree that it is in line with our previous decisions. For example, in *Kentucky Bar Ass'n v. Beal*, 169 S.W.3d 860 (Ky. 2005), Beal was publicly reprimanded after he was found guilty of violating SCR 3.130-8.1(b). And in *Kentucky Bar Ass'n v. Leadingham*, 269 S.W.3d 419 (Ky. 2008), Leadingham received a thirty-day suspension, which was probated for one year on the condition that he attend the KBA's Ethics and Professionalism Enhancement Program, for violating SCR 3.130-3.4 and SCR 3.130-8.1(b).

We also note that the Chair of the Inquiry Commission and a past president of the KBA have reviewed and approved Emerson's motion requesting the above discipline. We agree and find it appropriate given Emerson's previous violations.

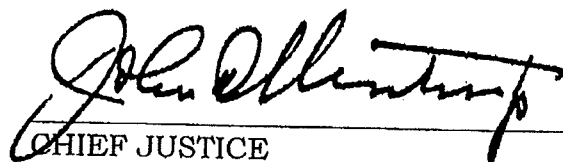
### **Discipline**

Agreeing that the negotiated sanction proposed in Emerson's motion is appropriate, it is ORDERED that:

1. Eric Lamar Emerson shall be suspended from the practice of law for an additional thirty days, beginning upon the expiration of his 2010 two-year suspension; and
2. In accordance with SCR 3.450, Emerson is to pay all costs associated with these proceedings, said sum being \$322.71, for which execution may issue from this Court upon finality of this Opinion and Order.

All sitting. All concur.

ENTERED: August 26, 2010.

  
CHIEF JUSTICE

TO BE PUBLISHED  
JUN 21 2010

# Supreme Court of Kentucky

2009-SC-000508-KB

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

ERIC LAMAR EMERSON

RESPONDENT

## OPINION AND ORDER

Respondent, Eric Lamar Emerson, whose last known bar roster address is Gateway Center West, 300 Madison Avenue, Suite 300, Covington, Kentucky 41011 and whose KBA Member No. is 89553, was admitted to the practice of law in the Commonwealth of Kentucky in 2002. The Kentucky Bar Association has petitioned this Court to impose reciprocal discipline against Respondent because he has been disciplined in Ohio.

Respondent was previously publicly reprimanded in this state, *Kentucky Bar Ass'n v. Emerson*, 260 S.W.3d 782 (Ky. 2008), and then suspended from the practice of law in this state, *Kentucky Bar Ass'n v. Emerson*, 275 S.W.3d 183 (Ky. 2008) (61-day suspension); *Kentucky Bar Ass'n v. Emerson*, 276 S.W.3d 823 (Ky. 2009) (181-day suspension). Respondent received reciprocal discipline in Ohio for each of these cases. See *Disciplinary Counsel v. Emerson*, 897 N.E.2d 647 (Ohio 2008); *Disciplinary Counsel v. Emerson*, 903 N.E.2d 647 (Ohio 2009); *Disciplinary Counsel v. Emerson*, 903 N.E.2d 644 (Ohio 2009).

Since those cases were decided, Respondent has been subject to further discipline for other misconduct in Ohio. On June 25, 2009, the Ohio Supreme

Court found that Respondent had committed multiple instances of misconduct, which it described as follows:

Respondent agreed in August 2005 to pursue a civil rights action on behalf of a client, who then advanced \$1,200 for costs in her case. After filing an amended complaint in federal district court, respondent failed to respond to requests for discovery and did not appear as scheduled at two depositions. The district court ordered respondent in October 2006 to file a notice of withdrawal immediately or continue as counsel. Respondent did not withdraw but continued in failing to assist the client.

Respondent conceded that he had abandoned his client, leaving her to file motions on her own to preserve her claim. He also conceded his failure to promptly honor requests for the client's file and an itemized billing for his services. After the client filed a grievance with relator, respondent failed to reply to letters of inquiry even after promising during his deposition to respond in writing.

...

In December 2005, another client paid respondent \$2,500 for his representation, along with another attorney, in a property dispute with the client's ex-husband. During litigation in the matter, the court ordered the client to convey certain property rights to her ex-husband as part of the divorce decree. The client refused to sign the necessary papers and discharged respondent, afterward reclaiming her file and demanding a refund.

Respondent believed that he had earned the entire \$2,500 with the services he had provided. But he admittedly did not comply with the client's request for an itemized billing, explaining that he had not documented the hours spent on her case and had given her everything from which he might have reconstructed the time. After the client filed a grievance with relator, respondent further failed to respond to an investigator's letters, even after promising at his deposition to respond in writing.

...

A third client hired respondent in March 2006 after the client sustained injuries in a traffic accident. Respondent accepted the case but then failed to obtain his client's file from a previous lawyer and did not review court records of the proceedings that had already occurred. When respondent also failed to appear in the case on his client's behalf, the court dismissed the action for want of prosecution. Respondent failed to communicate with his client and did not return the case file upon request. He also failed to

reply to investigative letters relative to a grievance about his representation.

...

Before the Supreme Court of Kentucky suspended respondent from practice of law in that state, the court publicly reprimanded him for misconduct committed when he represented an Ohio resident in Kentucky during July 2006. Respondent had accepted a \$2,500 fee from that client and his family, later withdrew as counsel without returning any portion of the fee, and then failed to respond to the disciplinary charges brought against him.

During preliminary inquiries about the Kentucky case, respondent failed to respond to various letters and forced relator to subpoena him for deposition. He then failed to present a written response that during his deposition he had promised to provide.

*Cincinnati Bar Ass'n v. Emerson*, 909 N.E.2d 635, 637-38 (Ohio 2009) (citations and paragraph marks omitted). The court summarized Respondent's misconduct as "repeatedly neglect[ing] [his] clients' legal interests and fail[ing] to cooperate in the ensuing disciplinary investigation." *Id.* at 638. As a result of the misconduct, Respondent was indefinitely suspended from the practice of law in Ohio and barred from applying for reinstatement for two years. *Id.*

In August 2009, the KBA moved this Court to issue an order requiring Respondent to show cause why identical reciprocal discipline should not be imposed under SCR 3.435. A show cause order was issued on October 1, 2009. Respondent failed to file a response, so the issue of what, if any, discipline to impose is now ripe for review by this Court.

Under Kentucky Supreme Court Rule 3.435, Respondent shall be subject to identical discipline in the Commonwealth of Kentucky unless he proves by substantial evidence: (a) a lack of jurisdiction or fraud in the out-of-state disciplinary proceeding, or (b) that the misconduct established warrants

substantially different discipline in this State. SCR 3.435(4). The Ohio Supreme Court's order, as a "final adjudication in another jurisdiction that an attorney has been guilty of misconduct[,] shall establish conclusively the misconduct for purposes of a disciplinary proceeding in this State." SCR 3.435(5).

Seeing no reason why Respondent should not be subjected to identical discipline in this state SCR 3.435, it is hereby ORDERED that:

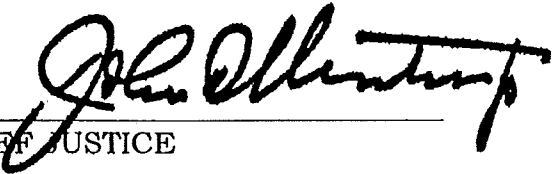
1. The Kentucky Bar Association's petition for reciprocal discipline is GRANTED. Respondent, Eric Lamar Emerson, is suspended indefinitely from the practice of law in the Commonwealth of Kentucky and shall not seek reinstatement for two years.

2. In accordance with SCR 3.450, Respondent is directed to pay any costs associated with these disciplinary proceedings against him, should there be any, and execution for such costs may issue from this Court upon finality of this Opinion and Order.

3. Should Respondent currently have any clients, pursuant to SCR 3.390, he shall, within ten days from the entry of this Opinion and Order, notify all clients in writing of his inability to represent them, and notify all courts in which he has matters pending of his suspension from the practice of law, and furnish copies of said letters of notice to the Director of the Kentucky Bar Association. Furthermore, to the extent possible and necessary, Respondent shall immediately cancel and cease any advertising activities in which he is engaged.

All sitting. All concur.

ENTERED: January 21, 2010.

  
CHIEF JUSTICE

Supreme Court of Kentucky

2008-SC-000487-KB

TO BE PUBLISHED

**FINAL**

**DATE** 2-3-09 ELLA Grant, P.C.

KENTUCKY BAR ASSOCIATION

MOVANT

V. IN SUPREME COURT

ERIC LAMAR EMERSON

RESPONDENT

**OPINION AND ORDER**

The Kentucky Bar Association (KBA) has moved this Court pursuant to SCR 3.370(8) to determine the limited issue of whether Eric Lamar Emerson, whose bar roster address is 300 Madison Avenue, Suite 200, Covington, Kentucky, 41011, and whose KBA number is 89553, is guilty of violating SCR 3.130-8.1(b) for failing to respond to the bar complaint filed against him. If this Court finds Emerson guilty of the charge, the KBA has also asked the Court to determine what effect, if any, that finding of guilt would have on Emerson's recommended discipline. Having found that Emerson is guilty of violating SCR 3.130-8.1(b), we conclude that the KBA's recommended discipline suspending Emerson from the practice of law for thirty days and requiring him to pay \$750.00 to his former client is too lenient. In light of this subsequent finding of guilt and Emerson's history of ethical violations, we find

that in addition to repaying his former client \$750.00, Emerson's period of suspension should be increased to 181 days.

Emerson was admitted to practice law in the Commonwealth of Kentucky in October 2002. On May 5, 2007, Michael Deckard hired Emerson to defend him in district court and paid Emerson \$1,500.00 as part of their fee arrangement. Approximately one month later, on June 12, 2007, Deckard terminated his legal relationship with Emerson, complaining that Emerson failed to return his phone calls, would not explain anything to him, and lost some of the documents to be used in his defense. Following this termination, Emerson neither provided Deckard with a detailed billing nor an explanation of why he refused to refund any portion of the \$1,500 fee, which was not fully earned. On August 27, 2007, Deckard filed a bar complaint against Emerson.

On October 24, 2007, the Disciplinary Clerk sent the bar complaint and a letter to Emerson via certified mail, informing Emerson of the twenty-day deadline for responses and reminding him that failing to respond to a lawful demand for information from the disciplinary authority could result in an additional charge of violating SCR 3.130-8.1. Although the return receipt for this letter was signed by someone other than Emerson, on December 3, 2007, the Campbell County Sheriff's Office personally served Emerson with a copy of the bar complaint. Having received no response from Emerson for over a month, on January 18, 2008, the Disciplinary Clerk sent a reminder letter to Emerson, which he personally signed for on January 25, 2008. Again, however, Emerson never responded.

Thereafter, on March 18, 2008, the Inquiry Commission issued a three count charge against Emerson, alleging that he violated SCR 3.130-1.4(a) and/or (b) (communication), SCR 3.130-1.16(d) (failure to follow proper steps on termination of representation), and SCR 3.130-8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority). The Kenton County Sheriff's Office personally served a copy of this charge and a letter explaining the twenty-day deadline to file an answer on Emerson on April 2, 2008. A reminder letter was mailed to Emerson on April 22, 2008, but the Bar Counsel never received a response or an answer from Emerson. Thus, on May 16, 2008, the KBA presented Emerson's charges to the Board of Governors as a default case. On July 7, 2008, the Board of Governors filed its findings of facts and conclusions of law, recommending that Emerson be found guilty of violating SCR 3.130-1.16(d) and not guilty of violating SCR 3.130-1.4(a) and/or (b). As to Emerson's charge of violating SCR 3.130-8.1(b), the Board was unable reach the required eleven votes to find Emerson guilty of this charge.<sup>1</sup> The KBA has sought review in this Court pursuant to SCR 3.370(8) to determine whether Emerson is indeed guilty of violating this charge. Emerson has not filed a reply brief to the KBA's position in this case. Having found that Emerson did fail to respond to a demand for information from a disciplinary authority, we agree with the KBA's recommendation that Emerson is guilty of violating SCR 3.130-8.1(b).

---

<sup>1</sup> According to SCR 3.370(6), the findings of fact and disciplinary recommendations must be agreed upon by eleven members of the Board of Governors. In Emerson's case, only nine members found him guilty of failing to respond to a lawful demand for information, while six members found him not guilty.

SCR 3.130-8.1 states that “a lawyer . . . in connection with a disciplinary matter shall not . . . knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority . . . .” Although this Rule does not expressly state that a bar complaint or a complaint issued by the Inquiry Commission is “a lawful demand for information,” this Court has consistently adopted such an interpretation and has held that a lawyer who fails to respond to a bar complaint violates SCR 3.130-8.1(b). Heist v. KBA, 951 S.W.2d 326 (Ky. 1997) (finding an attorney guilty of violating SCR 3.130-8.1 when he failed to respond to two bar complaints filed against him and to the complaint issued by the Inquiry Tribunal); Gilliam v. KBA, 8 S.W.3d 571 (Ky. 2000) (holding that an attorney violated Rule 8.1 when he failed to respond to the bar complaint served on him by the sheriff); KBA v. Perry, 102 S.W.3d 507 (Ky. 2003) (finding a lawyer guilty of violating SCR 3.130-8.1 for failing to respond to a bar complaint); KBA v. Griffith, 186 S.W.3d 739 (Ky. 2006) (holding that an attorney violated SCR 3.130-8.1 for not responding to the charges brought by the KBA). Furthermore, Emerson has previously twice been found guilty of violating SCR 3.130-8.1(b) for this same conduct, *i.e.*, failing to respond to a bar complaint. KBA v. Emerson, 260 S.W.3d 782 (Ky. 2008); KBA v. Emerson, --- S.W.3d --- (Ky. 2008).

Here, despite the bar complaint personally served on Emerson in December 2007, the reminder letter sent in January 2008, the Inquiry Commission charge personally served on Emerson in early April 2008, and the second reminder letter sent in late April 2008, Emerson has repeatedly failed to

respond to any of the charges brought against him. Thus, Emerson plainly violated SCR 3.130-8.1(b).

As far as Emerson's discipline, we find that due to his numerous recent ethical violations, the KBA's recommendation of a thirty-day suspension and repayment of \$750.00 is too light. In August 2008, this Court publicly reprimanded Emerson for violating SCR 3.130-1.16(d), SCR 3.130-3.4(c), and SCR 3.130-8.1(b). Emerson, 260 S.W.3d at 783. These violations stemmed from Emerson's conduct in July 2006, when he accepted a \$2500 fee from a client, later withdrew as counsel without returning any portion of the fee, and failed to respond to both the bar complaint and the charges brought by the Inquiry Commission. Id. at 782. In December 2008, Emerson was suspended from the practice of law for 61 days for violating SCR 3.130-1.1, SCR 3.130-1.3, SCR 3.130-1.4(a), SCR 3.130-1.16(d) and SCR 3.130-8.1(b). Emerson, --- S.W.3d at ---. These charges were based on Emerson's failure to file two motions for shock probation in the Kenton Circuit Court after accepting payment from his client to do so, and his failure to respond to the complaint issued against him. Id. Having considered Emerson's prior disciplinary matters and the additional finding of guilt for violating SCR 3.130-8.1(b), we find that in addition to repaying the \$750.00, Emerson should be suspended from the practice of law for 181 days. In addition, because the Board's findings and conclusions as to Emerson's other charge of violating SCR 3.130-1.16(d) are supported by the record and the law, we adopt this decision pursuant to SCR 3.370(10).

ACCORDINGLY, IT IS HEREBY ORDERED:

1. Eric L. Emerson is adjudged guilty of violating SCR 3.130-1.16(d) and SCR 3.130-8.1(b).

2. Eric L. Emerson is suspended from the practice of law in this Commonwealth for a period of 181 days. The suspension shall commence from the date of entry of this order and shall continue until Emerson is reinstated pursuant to SCR 3.510(2).

3. Eric L. Emerson is directed to refund \$750.00 to Michael Deckard within thirty (30) days from the entry of this Opinion and Order.

4. Pursuant to SCR 3.390, Eric L. Emerson shall, within ten (10) days from the entry of this Opinion and Order, notify all clients, in writing, of his inability to represent them; notify, in writing, all courts in which he has matters pending of his suspension from the practice of law; and furnish copies of all letters of notice to the Executive Director of the Kentucky Bar Association. Furthermore, to the extent possible, Emerson shall immediately cancel and cease any advertising activities in which he is engaged

5. Pursuant to SCR 3.450, Emerson is directed to pay all costs associated with these disciplinary proceedings in the amount of \$211.65.

All sitting. All concur.

Entered: January 22, 2009

  
CHIEF JUSTICE

TO BE PUBLISHED  
**Supreme Court of Kentucky** **FINAL**

2008-SC-000732-KB

DATE 1-5-09 E.A.G. Ground DC.

KENTUCKY BAR ASSOCIATION

MOVANT

V.

IN SUPREME COURT

ERIC LAMAR EMERSON

RESPONDENT

**OPINION AND ORDER**

The Board of Governors of the Kentucky Bar Association has unanimously recommended to this Court that Respondent, Eric Lamar Emerson, who was admitted to practice law in Kentucky in October 2002, whose Bar Roster Address is Gateway Center West, 300 Madison Ave., Suite 200, Covington, Kentucky 41011, and whose KBA Member Number is 89553, be suspended from the practice of law for 61 days.

The Charge against Emerson stems from his failure to file two motions for shock probation in the Kenton County Circuit Court after his client paid him to do so. The client and others repeatedly tried to contact him about this matter to no avail, and the client instead filed his own pro se requests for shock probation. The time to file these motions had expired, and they were denied.

Prior to the Charge being issued in this case, the Bar Complaint was served upon Emerson by the Kenton County Sheriff on April 2, 2008. Emerson

made no response to the Bar Complaint. The Inquiry Commission issued a five-count Charge against Emerson on May 6, 2008. The five counts alleged that Emerson violated SCR 3.130-1.1 (competence),<sup>1</sup> SCR 3.130-1.3 (diligence),<sup>2</sup> SCR 3.130-1.4(a) (communication),<sup>3</sup> SCR 3.130-1.16(d) (failure to take reasonable steps to protect client's interest upon termination of representation),<sup>4</sup> and SCR 3.130-8.1(b) (failure to respond to demand from disciplinary authority).<sup>5</sup> Emerson signed a certified mail return receipt for the Charge on May 9, 2008, and a reminder letter was mailed to him on July 18, 2008. No Answer to the Charge was ever filed.

Since Emerson did not answer the Charge and he did not appear before the Board of Governors, this Charge proceeded as a default case pursuant to SCR 3.210(1). The Board voted 15 to 0 to find Emerson guilty of Counts I to IV (violations of SCR 3.130-1.1, 3.130-1.3, 3.130-1.4(a), and 3.130-1.16(d)). The

---

<sup>1</sup> SCR 3.130-1.1 provides: "A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

<sup>2</sup> SCR 3.130-1.3 provides: "A lawyer shall act with reasonable diligence and promptness in representing a client."

<sup>3</sup> SCR 3.130-1.4(a) provides: "A lawyer should keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

<sup>4</sup> SCR 3.130-1.16(d) provides: "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned."

<sup>5</sup> SCR 3.130-8.1(b) provides: "... [A] lawyer ... in connection with a disciplinary matter, shall not:

...

(b) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from ... [a] disciplinary authority ..."

Board also voted 14 to 1 to find Emerson guilty of Count V (violation of SCR 3.130-8.1(b)).

The Board of Governors then considered the prior discipline of Emerson. On August 28, 2008, this Court publicly reprimanded Emerson for his violations of SCR 3.130-1.16(d), 3.130-8.1(b), and 3.130-3.4(c). See Kentucky Bar Ass'n v. Emerson, 260 S.W.2d 782 (Ky. 2008). After considering this prior discipline, the Board of Governors voted unanimously to recommend that Emerson be suspended from the practice of law for 61 days.

Neither Emerson nor Bar Counsel has filed a notice pursuant to SCR 3.370(8) for this Court to review the Board's decision, and we do not elect to review the decision of the Board pursuant to SCR 3.370(9). This Court sees no reason not to accept the Board's recommendation, and the decision of the Board is hereby adopted pursuant to SCR 3.370(10).


ACCORDINGLY, IT IS HEREBY ORDERED:

1. Respondent, Eric Lamar Emerson, is suspended from the practice of law for 61 days for violating SCR 3.130-1.1, SCR 3.130-1.3, SCR 3.130-1.4(a), SCR 3.130-1.16(d), and SCR 3.130-8.1(b).
2. Pursuant to SCR 3.390, Respondent is directed to notify in writing all clients and all courts in which he has matters pending of his inability to practice law, within ten days from the date of entry of this Opinion and Order. Respondent is further directed to furnish copies of said letters of notice to the Director of the Kentucky Bar Association.
3. Respondent shall without delay, to the extent reasonably possible, cancel and cease any advertising activities in which he is engaged.

4. In accordance with SCR 3.450, Respondent is directed to pay all costs associated with these disciplinary proceedings in the amount of \$449.42, for which execution may issue from the Court upon finality of this Order.

All sitting. All concur.

ENTERED: December 18, 2008.

  
\_\_\_\_\_  
CHIEF JUSTICE